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November 13, 2007

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY AND ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172*

Dear Ms Dortch:

In this filing, the undersigned carriers submit additional evidence clearly demonstrating that Verizon has fallen far short of the mark for facilities-based market penetration set by the Commission in the *Omaha Forbearance Order*¹ in the New York Metropolitan Statistical Area ("MSA").² The data recently filed by Time Warner Cable Inc. ("TWC")³ confirms data previously filed by the undersigned carriers⁴ that TWC has not achieved

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007) ("*Qwest Omaha*").

² The undersigned carriers plan to separately address the data filed by other cable companies.

³ Letter from Brian Murray, Counsel to Time Warner Cable Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (Nov. 5, 2007) ("*TWC Data Ex Parte*").

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market penetration in either the residential or the business market in its service territory within the New York MSA that comes anywhere close to the level of loop-based competition found to exist in the Omaha MSA.⁵

The framework established by the Commission in the *Omaha Forbearance Order* to guide its Section 251(c)(3) forbearance analysis requires the party petitioning for forbearance to show separately for each product market that competitive carriers have constructed competing last-mile facilities in a wire center and that each of those competitive carriers is willing and able to use its facilities, including its own loop facilities, within a commercially reasonable period of time to provide a full range of services that are substitutes for the incumbent local exchange carrier's ("ILEC's") local service offerings to at least 75% of the end user locations accessible from a wire center.⁶ Thus, there are two separate but related showings that must be made. *First, the petitioning party must prove that the coverage threshold is met; i.e., that there are competitors who are willing and able to use their own loop facilities to provide substitutable services to at least 75% of the end user locations in a wire center within a commercially reasonable period of time. Second, if the coverage requirement is met in a particular product and geographic market, the petitioning party then must demonstrate that those facilities-based competitors have achieved at least the level of competitive market penetration that existed in the Omaha MSA at the time of the Omaha Forbearance Order.*

On November 5, 2007, TWC produced data from which its residential and business market penetration in the New York MSA can be calculated. **TWC's reported residential market share throughout its service territory is approximately one-fifth the level of market penetration interested parties have suggested had been achieved by Cox at the time of the Omaha Forbearance Order.**⁷ Specifically, the data shows that TWC's overall residential market share in its service territory within the New York MSA is a mere **BEGIN**
HIGHLY CONFIDENTIAL * [] *** END HIGHLY CONFIDENTIAL** percent.

⁴ See Letter from Brad Mutschelknaus and Genevieve Morelli, Counsel to Covad Communications Group, NuVox Communications and XO Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (Nov. 5, 2007) ("*Nov. 5th Ex Parte*").

⁵ The *Nov. 5th Ex Parte* addressed the competitive share achieved by cable-based providers throughout the entire New York MSA, whereas the analysis presented herein is limited to those portions of the New York MSA served by TWC. It is our intention to update this analysis to include the remaining areas of the New York MSA once the other cable companies that provide service in the New York MSA provide their data to the Commission.

⁶ See *Omaha Forbearance Order*, at n. 156, ¶ 69.

⁷ See, e.g., Comments of Comcast Corporation, WC Docket No. 06-172 (filed Mar. 5, 2007) ("*Comcast Comments*"), at 3-5.

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TWC's residential market penetration does not exceed **BEGIN HIGHLY CONFIDENTIAL** *** [] *** **END HIGHLY CONFIDENTIAL** percent in any individual wire center, and in more than half of the 93 wire centers reported by TWC, its residential market share does not exceed **BEGIN HIGHLY CONFIDENTIAL** *** [] *** **END HIGHLY CONFIDENTIAL** percent.

Not surprisingly, there is an even more dramatic difference between the level of loop-based competitive market penetration reported to have existed in Omaha at the time of the *Omaha Forbearance Order* and the market share TWC has reported for the business market in the New York MSA. TWC's New York MSA-wide business market penetration registers a barely-discernible **BEGIN HIGHLY CONFIDENTIAL** *** [] *** **END HIGHLY CONFIDENTIAL** percent.⁸ More specifically, TWC's business market penetration exceeds **BEGIN HIGHLY CONFIDENTIAL** *** [] *** **END HIGHLY CONFIDENTIAL** wire centers reported by TWC. Indeed, in the vast majority of wire centers, TWC's business market share is well below **BEGIN HIGHLY CONFIDENTIAL** *** [] *** **END HIGHLY CONFIDENTIAL** level.⁹

In sum, the data submitted by TWC confirms that the level of loop-based competition in the residential and business markets within the New York MSA is a small fraction of the loop-based competitive market penetration found to exist in Omaha at the time of the

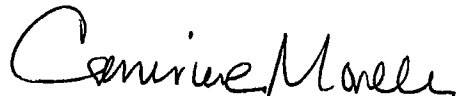
⁸ The business "lines" reported by TWC are predominantly data circuits that it provides to business customers. *See TWC Data Ex Parte*, at 2 ("[V]irtually all of the business end-user lines accounted for in Exhibit 1 are coaxial cable lines with a capacity of 1 to 15 Mbps downstream and up to 2 Mbps upstream."). To determine TWC's relative business market share, TWC's data circuits were converted to Voice Grade Equivalents ("VGEs") so that TWC's "lines" were comparable to Verizon's business lines (which include its switched voice lines as well as its data lines sold as special access and private lines). Because TWC's data services are not symmetrical and have varying downstream speeds, its lines were converted to VGEs based on the common upstream speed of 2 Mbps (converted to 64 kbps).

⁹ TWC was not able to attribute its lines to the wire center boundaries that define Verizon's network. TWC decided to employ a methodology developed by Verizon to convert its rate center and zip code specific data so it could be shown on an individual wire center basis. As has been detailed on several occasions, however, Verizon's methodology does not properly allocate competitors' lines to individual wire centers and operates to inflate competitors' presence in particular wire centers. *See, e.g., Letter from Brad E. Mutschelknaus, Counsel to Broadview Networks, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Sept. 4, 2007), at 16-20; Letter from Andrew D. Lipman, Counsel to Alpheus Communications, L.P., et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 6, 2007).* As such, the Commission should not assume that the wire center detail provided by TWC is accurate.

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Omaha Forbearance Order. Thus, a critical element of proof has not been met by Verizon and its petition for Section 251(c)(3) forbearance in the New York MSA must be denied.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Genevieve Morelli".

Brad E. Mutschelknaus
Genevieve Morelli

*Counsel to Covad Communications Group
and XO Communications, LLC*

GM:cpa